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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 05-26719-D-13L
LINDA C. LINDSAY,) Docket Control No. PGM-1
Debtor.) Date: November 21, 2006
Time: 1:00 p.m.
Dept: D

MEMORANDUM DECISION

Linda C. Lindsay (the "Debtor") has objected to the Proof of Claim filed by Douglas Lopes. For the reasons set forth below, the court will sustain the objection.

I. INTRODUCTION

The Debtor filed her Chapter 13 petition on June 2, 2005. In the F-Schedule filed in her case on July 7, 2005, the Debtor scheduled a disputed, unliquidated claim in favor of Mr. Lopes, in the amount of \$7,000.00, and states as follows: "unknown subject to set off for payment made by debtor of [\$]70,000 in 6/03." In an "Amended Schedule F" filed on July 8, 2005 (apparently intended to add omitted creditors), the Debtor did not include Mr. Lopes.

On July 28, 2005, a timely Proof of Claim, which the Clerk denoted as Claim No. 3 (the "Claim"), was filed on behalf of Mr. Lopes. In the Claim, Mr. Lopes alleges that he was owed the sum of \$13,000 at the time the Debtor's bankruptcy case was filed and that the debt was incurred in November 2003, but the Claim does not state the basis for the Claim (the box marked "Other" is checked, but no description follows). The Claim indicates that

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1 no part of the amount owed is secured by property or entitled to
2 priority.

3 On August 21, 2006, the Debtor filed an objection to the
4 Claim, bearing Docket Control No. PGM-1 ("the Objection"). In
5 the Objection, the Debtor requests that the court disallow the
6 Claim in its entirety. In support of the Objection, the Debtor
7 filed on August 21, 2006 a four-sentence Declaration of Linda
8 Lindsay and one exhibit, consisting of a copy of the Claim. The
9 Debtor's August 21 declaration states that the Claim is based on
10 damage for personal property, and the Debtor denies that she
11 damaged "any property." The Objection was set for hearing on
12 October 10, 2006.

13 On September 27, 2006, Mr. Lopes filed opposition to the
14 Objection (the "Opposition"). The Opposition was supported by a
15 Declaration of Doug Lopes, also filed September 27, 2006. On
16 October 3, 2006, the Debtor filed a Reply, which was not
17 supported by an additional declaration or other evidence, but
18 which asserted that Mr. Lopes had failed to provide evidence
19 sufficient for allowance of the Claim.

20 Given the nature of the dispute and the status of the record
21 made up to that time, the court at the October 10, 2006 hearing
22 requested that the parties submit, on or before November 13,
23 2006, a joint statement describing payments not disputed between
24 the parties and payments in dispute. The hearing was continued
25 to November 21, 2006.

26 The parties did not submit a joint statement as requested by
27 the court. Instead, on November 13, 2006, only the Debtor filed
28 further documents, consisting of a twice-filed a "Supplemental

1 Reply." No party pursuant to Local Bankruptcy Rule 9014-1(f)
2 stated opposition to the resolution of disputed factual issues
3 pursuant to Federal Rule of Civil Procedure 43(e), made
4 applicable by Federal Rule of Bankruptcy Procedure 9017.

5 II. ANALYSIS

6 This court has jurisdiction over the Objection pursuant to
7 28 U.S.C. sections 1334 and 157(b)(1). The Objection is a core
8 proceeding under 28 U.S.C. section (b)(2)(B). The Objection was
9 brought pursuant to Federal Rule of Bankruptcy Procedure 3007.

10 A proof of claim executed and filed according to applicable
11 rules is presumed to be prima facie valid. Fed. R. Bankr. P.
12 3001(f); see 11 U.S.C. § 501(a) (deeming a filed proof of claim
13 as allowed). If the allegations in a proof of claim "set forth
14 all the necessary facts to establish a claim and are not self-
15 contradictory, they prima facie establish the claim." In re
16 Holm, 931 F.2d 620, 623 (9th Cir. 1991). A proof of claim
17 lacking documentation does not qualify for the evidentiary
18 benefit of Rule 3001(f), but that by itself is not a basis to
19 disallow the claim. See In re Heath, 331 B.R. 424 (B.A.P. 9th
20 Cir. 2005) (credit card claims).

21 The objecting party may overcome a proof of claim's
22 presumptive validity only by offering evidence of equally
23 probative value in rebutting the evidence offered by the proof of
24 claim. Ashford v. Consolidated Pioneer Mortgage (In re
25 Consolidated Pioneer Mortgage), 178 B.R. 222, 226-27 (B.A.P. 9th
26 Cir. 1995, aff'd 91 F.3d 151 (9th Cir. 1996). With such an
27 objection, the burden shifts back to the claimant to produce
28 evidence meeting the objection and establishing the claim.

1 Consolidated Pioneer, 178 B.R. at 226 (quoting In re Allegheny
2 Internat'l, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

3 In this case, the Claim is lacking in documentation and
4 fails to describe the basis for the allegation that money is
5 owing. The statements in the Debtor's F-Schedule as to amounts
6 owed to Mr. Lopes do not lend any support to the Claim. The
7 Debtor's statement, describing a "payment made by debtor of
8 [\$]70,000 in 6/03," could not possibly support the existence of
9 the obligation alleged in Claim, which obligation Mr. Lopes
10 asserts was incurred months later, in November 2003. Lacking any
11 statement of the basis for the claim, the court finds that the
12 Claim is not valid on its face.

13 In response to the Debtor's objection to the Claim, however,
14 Mr. Lopes was given the opportunity to prove up the Claim. In
15 his declaration filed September 27, 2006, the only testimony
16 submitted in support of the Opposition, Mr. Lopes describes a
17 "partnership" between himself and the Debtor, but provides no
18 dates or no documentary evidence of such a partnership. He goes
19 on to state:

20 Settlement of the Lindsay Lopes partnership and
21 relationship ended with provision for buy out of equity
22 and return of personal property. Cash has been paid,
23 but the limited personal property that was returned was
24 damaged or missing. I have not received many personal
items. The loss and damage to his [sic] personal
property is the subject matter of my claim and cross
complaint against Lindsay.

25 I claim over \$15,000 in missing personal property
26 taken by Lindsay.

27 The court finds this evidence unconvincing. In the face of
28 the Debtor's statement that she damaged no property, Mr. Lopes
has not even provided even the most rudimentary description of

1 any such property, much less a valuation of such property. The
2 court cannot conclude that Mr. Lopes has born his burden of
3 proving a claim for property damage where the property is not
4 even described. In addition, Mr. Lopes's assertion in his
5 declaration, that \$15,000 is owed, is inconsistent with his
6 statement in the Claim that \$13,000 is owed, which undermines his
7 credibility.

8 Given the lack of prima facie validity for the Claim, and
9 Mr. Lopes's subsequent failure to prove up the Claim in this
10 proceeding, the Claim will be disallowed in its entirety.

11 III. CONCLUSION

12 For the reasons set forth above, the court will sustain the
13 Debtor's objection to the Claim. The court will issue an order
14 consistent with this memorandum.

15
16 Dated: DEC - 1 2006

Robert Bardwil

ROBERT S. BARDWIL
United States Bankruptcy Judge

CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

Office of the United States Trustee
501 "I" Street, 7th Floor
Sacramento, CA 95814

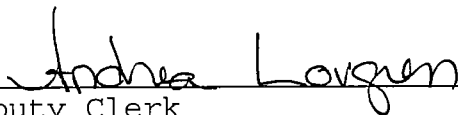
Lawrence Loheit
P.O. Box 1858
Sacramento, CA 95812-1858

Linda Lindsay
P.O. Box 58
Garden Valley, CA 95633

Peter Macaluso, Esq.
910 Florin Rd., #111
Sacramento, CA 95831-5259

Patrick Calhoun, Esq.
262 E. Hamilton Avenue, Suite H
Campbell, CA 95008

DATE: **DEC - 1** 2006


Deputy Clerk